IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/03/2003

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THE HONOURABLE MR.JUSTICE P.SATHASIVAM

W.P.No.41519 of 2002

M/s Frendi Fashions Pvt. Ltd.,
rep. by its Managing Director
Mr.Dipak Raj
Archana Chambers
40, Mount Poonamallee Road
Chennai 600 016 .. Petitioner

-Vs-

1. The Joint Director
Apparel Export Promotion Council
Regional Office
Karumuthu Centre
498, Anna Salai
Chennai 600 032

2. The Appellate Committee
O/o the Textile Commissioner
New CGO Building
48, New Marine Lines
Mumbai-20

3. The Second Appellate Committee
Ministry of Textiles
Exports III Section
New No.339-A, Udyog Bhavan
New Delhi .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, as stated therein.

For Petitioner :: Mr.P.Subba Reddy

For Respondents :: Mr.V.Balasubramanian
SCGSC for R1
Mr.K.S.Vasan for
M/s Murthi & Vasan for
RR 2 and 3
:ORDER

By consent of both the parties, the main writ petition itself is taken up for disposal.

2. Aggrieved by the order of the Second Appellate Committee, Ministry of Textiles, Exports III Section, New Delhi, dated 27.9.2002 dismissing the appeal, the petitioner-firm has preferred the above writ petition to quash the same.

3. Heard the learned counsel for petitioner as well as the respondents.

4. It is seen that the petitioner is engaged in the business of export of garments and fabrics and governed by the Export and Import policy for export of readymade garments and knitwear to U.S.A., Canada, European Union and Norway. The Apparel of Export Promotion Council issues the Garment Export Entitlement Policy. The petitioner is concerned with the policy for 1994-96. The Ministry of Textiles, New Delhi, issued a Notification No.1/29/93 EP (T&J)/1 dated 4.9.93 laying down the condition applicable for the period 1996-98 for export in respect of garments and knitwear to countries where such exports are governed by restraint under the provisions of the agreement on textiles and clothing. Clause 4 of the notification sets out the past performance entitlement. The first respondent has allotted the revalidated quantity of 97249 pieces of garments of various types under the PP/PT quota during the period from 1.10.96 to 31.12.96 against which the petitioner shipped 78166 pieces and the balance quantity of 19083 pieces could not be shipped due to natural calamity. Due to failure on the part of the petitioner to fully utilise the revalidated quantity within the prescribed period, the first respondent issued a show cause notice dated 11.9.97 and demanded a sum of Rs.6,10,656/-. A reply was sent to the show cause notice and the first respondent passed an order dated 19.12.97 directing the petitioner to deposit the said amount within ninety days. Questioning the said order, the petitioner preferred an appeal before the second respondent. After hearing both the parties, the second respondent confirmed the order of the first respondent. Not satisfied with the order, the petitioner preferred the third appeal to the third respondent, the Second Appellate Committee. Since the third respondent also confirmed the order of the respondents 1 and 2 and dismissed the appeal, the petitioner has preferred the above writ petition.

5. The only reason pleaded before all the three authorities for non fulfilment of the quota within the prescribed period is "force majeure". The said aspect was considered by all the three authorities. Though it was represented before the said authorities that the delay in receipt of fabric was due to heavy rains in Erode and Salem, the fact remains and the material shows that the heavy rain occurred only for few days. In the absence of any acceptable evidence to show that because of continuous and heavy rain which resulted in short utilisation, the said plea has rightly been rejected by all the three authorities. In the absence of any other material and in view of the fact that even the only objection was duly considered by all the three authorities, I am of the view that the said factual findings cannot be lightly interfered with while exercising the jurisdiction under

Article 226 of the Constitution of India. The Second Appellate Committee has also pointed out that due to omission of the petitioner firm, the country had lost valuable foreign exchange.

6. In the light of what is stated above, I do not find any merit in the claim made by the petitioner. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, W.P.M.P.No.6 1439 of 2002 is also dismissed.

Index: yes
Internet: yes

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